A BILL TO AMEND THE HIGH COURT REGULATION (I of 1067).

Mr. Vieyra. —From the Statement of Objects and Reasons appended to the High Court Regulation Amendment Bill, it will be seen that the Bill was the result of the modifications proposed in the Civil Courts Regulation Amendment Bill whereby the work of the High Court would have been considerably lightened. It was therefore proposed to reduce the number of Judges in the High Court. Now that the Civil Courts Bill has been thrown out, it is not possible to proceed further with the other Bill. I therefore move, under Section 34 of the Rules, for permission to withdraw the Bill to amend the High Court Regulation.

Seconded by Mr. Govinda Pillai.

Permission was granted accordingly.

CANALS AND PUBLIC FERRIES BILL.

Mr. Ananda Row.—I beg to propose that the report of the Select Committee on the Canals and Public Ferries Bill be taken up for consideration.

Both the report and the amended Bill have been published in the Gazette and copies circulated among the members. Notice of certain amendments has been given by some of the members and the same may be considered in the order of the sections to which they relate.

Seconded by Mr. Raman Tampi.

The motion was put and agreed to.

Mr. Ananda Row.—The first motion is that of Mr. Raman Tampi to abandon this Bill. So far as this Bill is concerned, I may mention that the principle was unanimously affirmed at the meeting of the Council held on 24th July last. This motion will, therefore, go against the sense of the Council and against the spirit of Sections 28 and 46 of the Rules.

Mr. Raman Tampi.—The first question is whether I am in order in making this motion. The objection is based upon Sections 28 and 46, para 2, of the Council Rules. But we have to interpret these rules consistently with the other provisions contained therein. No one can deny that the Council has the inherent power to drop a Bill at any stage. I therefore request that my motion be allowed.

Mr. Kuruvila.—I beg to second and support the motion of Mr. Raman Tampi.

The President.—The point for decision now is whether Mr. Raman Tampi is in order in moving that the Canals and Public Ferries Bill be abandoned. After reading the provisions of the rules bearing on the question and from what I have heard now, it seems to me that the Council has always two opportunities in the case of every Bill for voting upon it as a whole. The first occasion is when leave is applied for, for introducing a Bill. It is open to the Council then to either grant or refuse permission. The next opportunity is when the principle of the Bill is discussed in Council. If the Council think that a measure of the kind proposed is not necessary, the Bill can be thrown out. That being so, in the absence of any specific authorisation permitting a member to move at an intermediate stage that a Bill be thrown out, I do not think that this motion can be considered to be in order. I must therefore refuse Mr. Raman Tampi permission to make the motion.

Mr. Ananda Row.—The amendments of which notice has been given have now to be considered. The first amendment is in the definition of the term "Ferry" to be proposed by Mr. Kuruvila.

The President.—Before proceeding to that amendment, I would invite the attention of the Council to the definition of the term "Channel." The language as it stands at present may, I fear, lend itself to the interpretation that private waterways and private canals are contemplated to be brought within the scope of the

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Bill, especially because the word "public" is prefixed to the word "ferries" in the title and preamble. It is perhaps better to make the intention clear.

Mr. Govinda Pillai.—I think it is desirable to make the wording precise. With the permission of the President, I beg to propose that the word "public" be inserted before "canals" in line 2 of the title and in the preamble of the Bill and in line 2 of Section 1.

Seconded by Mr. Kuruvila.

Carried.

Section 2.

Mr. Govinda Pillai.—In view of the amendment just carried, it is necessary to define the term "Public canal." I propose that the following be substituted for the definition of 'canal.'

" 'Public canal' means a line of navigation which the public or a section of the public have a right to use and which is declared to be subject to the provisions of this Regulation."

Seconded by Mr. Raman Tampi.

Carried.

Mr. Kuruvila.—In the definition of "Ferry" in Section 2, I beg to propose that, instead of the existing words, after the word "conveyed", the words "regularly and habitually for hire by means of vessels, across a channel which is more than 300 ft. in width and 7 ft. in mean depth, for a length of 1,000 ft. on either side of the crossing" be substituted. With reference to this amendment in the definition of "ferry", I beg to submit that the word "channel" is defined in Section 2 as "any waterway natural or artificial," so that all waterways however narrow or shallow would fall under this category. The watercourses and canals in the littoral Taluks of North Travancore are so innumerable and of so varying widths and depths that the precedents and experiences of East Coast legislation can hardly be taken as in any way applicable to them. I trust that the Council will agree with me in thinking that, if the ferries which stand a chance of being brought under this Regulation cannot be embodied in a detailed list, we should at least discriminate them by fixing a standard of width and depth of crossing. I beg therefore that the amendment may be approved by the Council.

Seconded by Mr. Raman Tampi.

Mr. Ananda Row.—All that has been done here is an attempt at giving a logical definition of the term "Ferry" and I fail to see how all the difficulties mentioned by my friend can arise. It is not every ferry that the definition would cover that will be brought within the purview of the Regulation, as under Section 7, the discretion vests in the Dewan to declare by a Notification the ferries to which the Regulation should be made applicable. If the difficulties referred to exist in the case of certain ferries, they can well be excluded. I think therefore that the amendment is not necessary and even if any amendment is needed, it will perhaps come in more appropriately under Section 7.

Mr. Kuruvila.—Though particular ferries will be brought under the Regulation only by a Notification, it is desirable in the interests of the public to specify the ferries which alone have a chance of being governed by the Bill. It will be conceded, that the general public will not in all cases find it possible to influence the action of the executive after the Bill is passed into law.

The President.—But if the depth and mean width of the channel are limited as proposed, there will be practical difficulties in working the Regulation. For instance in the hot weather some canals might go below the minimum depth prescribed.

Mr. Govinda Pillai.—I think that the definition proposed would be found very inconvenient in practical working.

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The amendment was put to the vote and lost.

Mr. Ananda Row.—I beg to propose that the word "across a public canal, which is" be inserted between 'ferry' and 'declared' in line 1 of the definition of 'public ferry.' The amendment is intended to make the wording precise.

Seconded by Mr. Udaya Varma Raja.

Carried.

Section 3.

Mr. Ananda Row.—I beg to propose that the words "which the public or a section of the public have a right to use", be inserted between 'navigation' and 'to' in line 3 of Section 3. This amendment is consequent on the amendment already carried.

Seconded by Mr. Vieyra.

Carried.

Section 4.

Mr. Udaya Varma Raja.—I beg to propose that the word "that ply for hire along" be substituted for "using" in line 1 of Section 4 and the words "excepting those hereinafter referred to in Section 19" in the same Section be omitted.

It is quite clear that the main object of the Bill is to impose a check upon the rash and wayward actions of irresponsible boatmen who are solely actuated by the desire of receiving high fares. Registration seems therefore to be necessary only in the case of boats that are kept or offered for hire. Sufficient care is always taken by private individuals in the plying of their boats. Such vessels—I mean vessels that are kept not for hire—can be neither overcrowded nor overloaded. In fact we cannot expect them to be used in any manner detrimental to the interests of the owners themselves. Besides, they never fetch money to the owners in the shape of hire or fare. In the case of vessels nothing can be more welcome to the people than the drawing of a clear line of distinction between those that ply for hire and those that do not ply for hire.

It cannot be denied that some small *kevu vallams*—boats that regularly ply for hire—do come under the class of vessels of less than one ton measurement—a class that is completely exempted from the operation of the Bill as it stands now. The number of such small boats may not be great now. But when it is settled that the Regulation will not apply to boats of less than one ton measurement, I am sure a good lot of such vessels will soon be constructed and taken out to convey passengers and goods for hire. That it is highly necessary to provide against discrepancies of the kind is another reason why I have come forward with this amendment.

Again, in anticipation of the Hackney Carriages Bill which the learned member in charge of the Bill under consideration has applied for leave to introduce into the Council, I wish to say that there need be no invidious distinction between vessels and carriages. That Bill will apply only to carriages that ply for hire. If carriages that do not ply for hire can be safely let alone, I see no reason why vessels that do not ply for hire—conveyances that constitute a certain necessity in the northern divisions—should be handicapped by being subjected to the conditions, howsoever harmless they may be.

Seconded by Mr. Raman Tampi.

The President.— There seems to be another amendment proposed in the Section by Mr. Raman Tampi. I think for the sake of convenience we may take the two together.

Mr. Raman Tampi.— Sir, my amendment is that the following be substituted for the words "using a canal" in line 1 of this Section :—

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"habitually used by private individuals on receipt of fees or tolls to convey goods, animals or passengers across a public ferry or along a canal."

It is supposed that Government would be losing their control over all vessels using public canals if they are not registered and I think it is with this impression that the provision has been put in. It seems to me that there is no room for such apprehension at all. In the first place, the chief evils against which the Bill seeks to protect the public in respect of their person and property are overcrowding of vessels, or the using of public canals in contravention of whatever may be the rules as to which side boats should keep and things like that. As regards overcrowding and improper navigation, I believe the Penal Code contains sufficient safeguards. What remains to be done is only to prescribe rules for regulating the dimension, the freight of vessels &c. Section 14 of the Bill empowers Government to frame rules for regulating these things irrespective of whether the vessels are registered or not. It seems to me therefore that on this ground, the indiscriminate and compulsory registration of all vessels is not called for. The distance from Mavelikara to Tiruvalla is only 10 miles and one has to cross 8 ferries before one can reach the other side. Even in places north of Tiruvalla taluk the canals are to the people like lanes. It is therefore very necessary in my opinion to draw a line of distinction between vessels owned by private individuals and used by them only for their own purpose, on the one hand, and those used for the sake of profit, on the other. The two stand on different footings and my amendment seeks to make this distinction clear. For these reasons I beg that the Council be pleased to accept my amendment.

Mr. Kuruvila.—In seconding Mr. Raman Tampi, I only wish to add that the Council should take into consideration how much the provision will affect the daily avocations of poor people. Every time one gets out, even to earn one's bread by hard labour, one stands the chance of being molested by the ferry contractor. I think therefore that private individuals who use their boats for their purpose should be excluded from the Bill.

Mr. Ananda Row.—The provision of compulsory registration in regard to private vessels was put in not so much for revenue as for bringing such class of vessels within the rules regulating traffic. When vessels get into public canals, Government should have power to regulate their traffic, whether they be private vessels or those that ply for hire. I am therefore against the exclusion of private vessels from obligatory registration.

Mr. Vieyra.—The Bill as originally framed had a twofold object, one for the regulation of traffic and the other for the licensing of boats that ply for hire. The Select Committee have modified the provisions relating to the licensing of vessels. I submit that this does not take away the necessity for registering boats that use our waterways, for purposes of navigation and for safety. There is risk of danger and damage, if boats pass without any rule of the road. I am against the amendment proposed.

Mr. Govinda Pillai.—The provision in regard to registration may, I think, be restricted to boats that ply for hire. As regards traffic, the rules that may be framed under Section 14 will apply to private vessels as well and the penal provisions of the Bill will operate to punish those that infringe the rules. In regard to private boat owners, there is no necessity to interfere with them except when they contravene the rules. This would secure public convenience with the least interference of private rights.

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The President.—When the Bill is passed, it will have to be made applicable only to the large waterways, where there will not be much difficulty in distinguishing boats that ply for hire from private boats. The traffic of the latter can be regulated by a strict enforcement of the rules passed under Section 14. In matters of this kind, we have also to consider the possible hardship the Bill as it now stands will work on the general public.

After some more discussion, it was resolved by a majority of the Council that the Section be modified as follows:—

"All vessels that ply for hire along a public canal shall be registered excepting those hereinafter referred to in Section 19."

Section 6 Clause (1).

Mr. Ananda Row.—I propose that the words 'any public' be substituted for 'the' in line 1, and the word 'such' for 'the' at the end of line 4.

Seconded by Mr. Vieyra.

Carried.

Mr. Raman Tampi.—I propose that the last sentence of this clause be omitted, as it is necessary to remove immediately any obstruction on the waterways.

Seconded by Mr. Vieyra.

Carried.

Clause (2).

Mr. Ananda Row.—I propose that the words 'from any public canal' be inserted between 'remove' and 'any' in lines (1) and (2).

Seconded by Mr. Kesava Pillai.

Carried.

Mr. Ananda Row.—I propose that the proviso at the end of the clause be omitted. The proviso is unnecessary as the clause as modified deals with obstructions on public canals only.

Seconded by Mr. Govinda Pillai.

Carried.

Clauses (3) & (4).

Mr. Ananda Row.—I propose that the words 'a public' be substituted for 'the' in line 3 of clause (3) and in line 1 of clause (4).

Seconded by Mr. Raman Tampi.

Carried.

Section 7.

Mr. Ananda Row.—I propose that the words 'across a public canal' be inserted between 'ferry' and 'to' in line 3.

Seconded by Mr. Subramania Iyer.

Carried.

Section 8.

Mr. Ananda Row.—I propose the words 'all previously existing rights of ferry within the limits defined in the notification shall cease and determine and' be omitted in lines 1 to 4, that the words 'such canal' be substituted for 'a channel' in line 7, and that the proviso at the end of the Section be omitted. The reason of this is obvious as there could be no private rights over public ferries.

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Mr. Kuruvila.—I second it. There are no recognised private rights of the kind contemplated.

Carried.

Section 9.

Mr. Ananda Row.—I propose that the words 'across a channel' be omitted in line 5, and the words 'such ferries' substituted for 'a public ferry' in line 6.

Seconded by Mr. Vieyra.

Carried.

Mr. Udaya Varma Raja:—I beg to propose that the word 'passengers' in line 10, Section 9, and the proviso added after 'ferry' in line 12, be omitted.

This is a very important amendment—an amendment the acceptance of which will be hailed with pleasure by every inhabitant of Travancore, without distinction of caste or creed. I take this opportunity to place the matter before the Council and fervently hope that the good sense of the Council will prevail in purging the Section of the unnecessary provision for imposing tolls on passengers. It is an undisputed fact that the addition of the proviso does not remove the chief objection. The well-to-do portion of the population of Travancore may not feel it a burden to have to pay one or two chuckrams a day at the ferry. I plead the cause of the poor inhabitants to whom crossing a ferry is a matter of necessity. The people of the Padmanabhapuram and the Trivandrum Divisions cannot have a right conception of the difficulties under which their brethren of the two Northern Divisions labour, in season and out of season, on account of the peculiar nature of the waterways of these parts. While ferries are numerous, too frequent are the occasions for using them, not for pleasure or convenience but for the exigencies of life.

Mr. Raman Tampi.—I second the motion. It seems to me rather too much to ask passengers also to pay tolls. The very fact that passengers travelling by carts have never been and, I suppose, will never be required to pay tolls, and the fact that Government expend a larger amount on the maintenance of roads, seem to me to be sufficient justification for exempting from payment the few passengers that cross our ferries.

Mr. Kuruvila.—In supporting the amendment, I wish only to add that the necessity for it will cease if a distinction is drawn between smaller and larger ferries and the former exempted from the operation of this Bill. There can be no objection to tolls being levied in the case of larger ferries such as that between Kottayam and Alleppey.

Mr. Subramonia Iyer.—I support the motion. The effect of the Section as it stands would be indirectly taxing the people of North Travancore. This would affect the poor people who form the majority of the population. To labourers who have to pass and re-pass ferries daily, the Section would work hardship. This would affect them more seriously when it is remembered that the wages of daily labourers who are barely able to maintain themselves are paid generally in kind more than in coin. For ordinary purposes of life, such as to go to the market, to attend a public office, or even to see a friend or a relative, ferries would be resorted to daily by all classes of people. In my humble opinion, the exemption in the case of school-masters and their pupils and public servants on duty, should be extended to all people without distinction.

Mr. Vieyra.—It is no doubt good, if we can possibly help it, to exempt passengers from payment of tolls. But the question of funds has to be considered.

After some discussion, the amendment for the omission of the word "passengers" was put to the vote and lost.

The question of the omission of the proviso was then discussed and the Council resolved that the exemption from tolls should be retained in the case of students.

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Mr. Udaya Varma Raja then proposed in lieu of his original amendment that the proviso be modified as follows.—

"Provided that no tolls shall be levied on students going to or returning from school."

The motion was put and agreed to.

Section 11.

Mr. Udaya Varma Raja.— I propose that the words " or anything in the possession of a passenger or person who is liable to such toll or fee" in lines 9 to 11 be omitted.

As Section 17 provides punishments for those who refuse or evade payment of any toll or fee payable under the Regulation, I do not think it necessary to empower public servants to seize any thing in the possession of passengers to recover the dues. Many evils may be created by the abuse of the power vested in them. I do not therefore think it safe to give legislative sanction to the exercise of such power by subordinates of the lower class.

Mr. Kuruvila.—I beg to second the amendment.

Mr. Kesava Pillai.— I think the provision is likely to work practical hardship, as the ferrymen will not ordinarily receive the toll in advance.

Mr. Ananda Row.— The difficulty can arise only if payment is not made. Even if ferrymen do not demand the toll in advance as they ought to, it is open to the people to get into the boat or not. Further, in the case of vessels, goods, vehicles or animals, they themselves are subject to seizure. If the provision is taken away in respect of passengers, the subsequent difficulty of realizing the small tolls is obvious.

The amendment was put to the vote and lost.

Section 12.

Mr. Ananda Row.— I beg to propose that the words " by the Peishcar of the Division" in line 3 be omitted. The retention of these words will create difficulty in practical working as the Peishcar cannot personally recover the dues. The work will, as in other cases, have to be left to the revenue officials.

Seconded by Mr. Vieyra.

Carried.

Section 14.

Mr. Ananda Row— I beg to propose the following amendments in this Section:—

(1) In line 2 insert the word 'public' after 'any';

(2) In lines 2 and 3 of clause (ii), omit the word 'for';

(3) In line 2 of clause (iii), substitute the word 'such' for 'any' and omit the word 'public' in line 3.

(4) Number the following at the end of clause (vi) as clause (vii) :—

"generally for the purposes of this Regulation".

Seconded by Mr. Kuruvila.

Carried.

Section 16.

Mr. Ananda Row.— I propose that the word 'public' be inserted between 'a' and 'cenal' in line 1 and that the Section be numbered as 15.

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Seconded by Mr. Subramania Iyer.

Carried.

Section 17.

Mr. Udaya Varma Raja.— I propose that the words "or without due cause delays any person, animal, vehicle, or other thing" be inserted between 'due' and 'shall' in line 8.

Cases of undue delay occasioned by ferrymen are not rare. Sometimes they absent themselves from the ferry, at other times they wait for a full complement of passengers and thus cause much inconvenience to those who have already arrived at the spot. I therefore recommend the insertion of this clause in the interests of people.

Seconded by Mr. Raman Tampi.

Mr. Ananda Row.— I think this is a matter which might be left entirely to the administrative authorities. If a particular ferryman is found guilty in this respect, the people of the locality can petition the authorities and get his license cancelled. The insertion of the clause proposed would further make it possible for any one to drag the ferryman vexatiously into court and the work at the ferry will suffer in consequence.

The amendment was put to the vote and lost.

Mr. Udaya Varma Raja.— My next amendment in the Section is that the words "simple imprisonment" be substituted for the words "imprisonment of either description" in lines 9 and 10, the word "fifty" be substituted for "one hundred" in line 12 and that the words "or with both" at the end of the Section be omitted.

I consider the penalty too great for the offence. The Ferries and Tolls Regulation of our sister State of Cochin prescribes for the offence only simple imprisonment, which may extend to one month or fine which may extend to Rs. 50. I think this will be a sufficient punishment for the offence.

Seconded by Mr. Raman Tampi.

The President.—In this Section, two distinct offences are dealt with together and the same punishment provided for both. The offence of refusal or evasion of payment of toll or fee is comparatively light and it is doubtful if that should be visited with imprisonment in the first instance or even with such a heavy fine as Rs. 100. It will perhaps be better if the Section itself is recast as two Sections.

Mr. Udaya Varma Raja.— I think a fine of Rs. 50 would be ample for the first offence. The punishment now provided in the Section for the graver offence of wrongful or excess levy of fees may be retained.

After some discussion, Mr. Udaya Varma Raja proposed that Section 17 be recast into two Sections and numbered as 16 and 17 as follows:—

"16. Any person who refuses or evades payment of any toll or fee payable under this Regulation shall on conviction by a Criminal Court be punishable with fine not exceeding fifty rupees."

"17. Any person who, without due authority, levies any toll or fee under colour of this Regulation, or being empowered to collect tolls or fees under this Regulation, collects or receives any sum in excess of the lawful due shall, on conviction by a Criminal Court, be punishable with imprisonment of either description not exceeding one month, or with fine not exceeding one hundred rupees or with both."

The amendment was put and agreed to.

Section 18 and Section 14 clause (v).

The President:— Section 18 provides, on conviction of any offence, for the confiscation of the vessel or any other thing used therein and clause (v) of Section 14

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enables Government to frame rules for the disposal of the property confiscated. It is doubtful whether, in a measure of this kind, we need go the length of confiscating the vessels and other things, especially in view of the practical hardship involved. Of course, I leave it to the sense of the Council to decide whether the provision should be retained or not.

The Council after some discussion resolved on expunging the provision.

Mr. Ananda Row then proposed that the whole of Section 18 and the words "confiscated or" in line 2 of clause (v) of Section 14 be omitted. He also proposed that Section 15 be numbered as 18.

Seconded by Mr. Kuruvila.

Carried.

Section 19.

Mr. Udaya Varma Raja.—I propose that this Section be omitted. It was obviously added to protect certain classes of vessels from the grasp of such provisions as would have borne hard upon them. I hope the members of the Council will agree with me in saying that the Bill in the amended form is rendered quite harmless by the removal of all objectionable provisions. The Bill still contains some provisions such as those for charging demurrage on vessels, removal of abandoned vessels, and stopping a vessel navigating a canal in contravention of any provision of this Regulation or any rule made thereunder and detaining it till the same is complied with. Now these are general provisions worthy of being applied to Sirkar vessels as well as private vessels. Nobody can question the Royal Prerogative enjoyed by Royal vessels. But there are Sirkar vessels maintained by different departments of the administration. We have for instance transit boats, D. P. W. boats, Excise boats, Police boats &c. I believe no member can differ from me when I say that all vessels whether Sirkar or private ought to obey the rules of the water-route.

Mr. Ananda Row.—I second the amendment. Since the scope of the Bill has been restricted to boats that ply for hire, the necessity for the exemption in the case of vessels falling under clauses (*a*), (*b*) & (*e*) is obviated. The vessels under clause (*c*) will be governed by the boat rules. With reference to (*d*) it does not seem necessary to exempt sea-going fishing-boats. As regards (*f*), in view of the fact that many *kevu vallams* come under this class, I think it is not safe or desirable to retain the exemption. As there is no particular necessity for clause (*g*), I think that may also be omitted. If this amendment is carried, the words "excepting those hereinafter referred to in Section 19" in Section 4 have also to be omitted.

After some discussion the amendment with the addition proposed by Mr. Ananda Row was carried.

The President.—On reading the penal Sections of this Bill, I find that, as they stand at present, a prosecution for any offence under the Bill can be started at will either by the ferryman against the passenger or by the passenger against the ferryman. In view of the nature of the offences and the wide scope the Bill would afford for vexatious prosecutions, it is a matter for consideration whether it would not be better that a preliminary enquiry should be made by some responsible officer and sanction accorded before the Criminal law is set in motion. If the sense of the Council is in favour of this view, a provision may be put in to the effect that no prosecution shall be instituted without the sanction of the Peishkar or Government.

Mr. Raman Tampi.— I think it will be a very wholesome provision, which will safeguard the interests alike of the ferrymen and the general public resorting to them.

The Council having resolved on the addition of the provision, Mr. Ananda Row proposed that the following be added as Section 19:—

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"No prosecution under this Regulation shall be instituted without the previous sanction of Government or of the Peishkar of the Division."

Seconded by Mr. Raman Tampi.

Carried.

Mr. Raman Tampi.— I beg to propose that the following be added as a new Section.

"Nothing in this Regulation shall affect the right of any person to sue for and obtain relief in a Civil Court respecting any damage or loss suffered or sustained by him in consequence of wrongful acts done or omissions made by Our Government or by any other person."

Though the common law rights of appeal will not be affected by the absence of any Section in the Regulation, still it is desirable in a special law like this to expressly declare the existence of such rights. Hence my amendment.

Seconded by Mr. Udaya Varma Raja.

The President.— I do not think that there is any necessity for a special declaration of the common law right in each Regulation. On the other hand, there is danger in mentioning it in one Regulation and omitting it in another, as in the latter case, it is liable to the interpretation that such rights are denied.

In the light of the above remarks, Mr. Raman Tampi withdrew his amendment.

Mr. Ananda Row.— I beg to move that the Bill as now amended be published in the Gazette and read again on a future day of which notice shall be given.

The motion was put and agreed to.

The Council adjourned at 7-10 P. M.

P. RAJAGOPALA CHARI,

President.

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